IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 763 of 1981

For Approval and Signature:

HON'BLE MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PATEL GORDHAN RAMJI KHUNT

Versus

PATEL CHHAGAN THAKARSHI LALA

Appearance:

1. First Appeal No. 763 of 1981

MR SURESH M SHAH for Petitioner No. 1

..... for Petitioner No. 2-4

NOTICE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE M.C.PATEL

Date of decision: 05/04/2004

ORAL JUDGEMENT

1. The appellants in this appeal under section 96 of

the Civil Procedure Code are the original plaintiffs. Their case was that the respondent No.1 had sold groundnut worth Rs.14,850-00 on their behalf and had collected the amount from the merchant to be paid to them. However, the respondent no.1 did not pay the amount and they contemplated taking criminal action against him. At that stage, respondent no.2 executed a surety bond for respondent no.1. Hence the appellants put off taking criminal proceedings. However, the respondent did not pay the amount. The appellants, therefore, filed the suit to recover the said amount.

2. The respondent no.1 in his written statement denied all the averments made in the plaint and contended that he had separated from respondent no.2 and he was not liable for the payment. Respondent no.2 also denied in his written statement that he had become surety on behalf of respondent no.1.

3. The learned Judge formed the following issues:-

(1) Whether the plaintiffs prove that defendant No.1 has accepted Rs. 14850 on their behalf from businessmen of Danapith, Gondal ?

(2) Whether the plaintiffs prove that the defendant No. 2 has become the surety of defendant No: 1 to pay Rs. 14850 ?

(3) Whether the plaintiffs prove that defendant No. 2 passed an agreement of suretyship on 10-4-74 ?.

After recording the evidence adduced by the parties, learned Judge recorded the following findings :-

(1) In the negative.

(2) In the negative.

(3) In the negative.

4. In view of the said findings the learned Judge dismissed the suit.

5. The appellants therefore filed this appeal challenging the said judgment & decree. I have been taken through the judgment and evidence on record. The learned judge has considered the evidence at length and recorded his findings on appreciation of the evidence. The findings are not shown to be erroneous in any way.

There is no substance in the appeal and the same is dismissed. No order as to costs.

Dt: 5-4-2004 (M.C. Patel, J)

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